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By: Alene C. Graener



PATENT
Attorney Docket No. 17516-008120US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

TRACEY A. MORLEY et al.

Application No.: 10/798,727

Filed: March 11, 2004

For: BIPOLAR CAUTERIZING
INSTRUMENT

Examiner: Unassigned

Art Unit: 3739

**RESPONSE TO NOTICE TO FILE
MISSING PARTS**

Assistant Commissioner for Patents
P.O. Box 1450, Mail Stop Missing Parts
Alexandria, VA 22313-1450

Dear Sir:

In response to the "Notice to File Missing Parts of Nonprovisional Application" filed under 37 CFR §1.53(b), dated September 24, 2004, Applicants, hereby authorize the Assistant Commissioner to charge the following fees:

Basic Filing Fee\$ 385.00

Missing Parts Surcharge.....\$ 65.00

TOTAL \$ 450.00

and any additional fees under 37 CFR §1.17 associated with this paper or during the pendency of this application, to Townsend and Townsend and Crew Deposit Account No. 20-1430.

In regard to the which is believed to have been omitted, Applicants assert that these items indicated as omitted are believed, in fact, to have been deposited with the Patent and Trademark Office with the original application papers filed on March 11, 2004. Nineteen (19) sheets of informal drawings were submitted with the application at that time, along with nineteen (19) sheets of formal drawings. A copy of the stamped return postcard specifically listing the

informal and formal drawings and stamped as received by the United States Patent Office is enclosed herewith. It is noted that neither the "Submission of Formal Drawings" or "19 Sheets of Formals" have not been lined out by the Office as having been missing. A duplicate set of the nineteen (19) sheets of informal and formal drawings are attached hereto. No new matter is added.

Also enclosed is a copy of PTO form "SB/05" filed in the present case on March 11, 2004. Applicant has highlighted the section of the form in Box 18, which states:

For CONTINUATION or DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts. (emphasis added)

Since these drawings were already incorporated into the present application, no new matter has been added and the present application should maintain the original filing date of March 11, 2004. Also, since the figures were originally incorporated into the application by reference Applicant does not believe that any amendments to the specification need to be made at this time.

The Commissioner is hereby authorized to charge the fee of \$130.00 (37 CFR §1.17(h)) and any other fees necessitated by this transmittal or credit any overpayment to Deposit Account No. 20-1430. However, please consider this a request for a refund of the petition fee as the Applicants believe that all drawings were submitted correctly.

Respectfully submitted,

Dated: 10/27/2004

By: Craig P. Wong
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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/798,727	03/11/2004	Tracey A. Morley	017516-008120US

20350
 TOWNSEND AND TOWNSEND AND CREW, LLP
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 SAN FRANCISCO, CA 94111-3834



CONFIRMATION NO. 4983
 FORMALITIES LETTER



OC000000013871891

Date Mailed: 09/24/2004

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

Items Required To Avoid Abandonment:

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.
Applicant must submit \$ 385 to complete the basic filing fee for a small entity.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$65 for a small entity in compliance with 37 CFR 1.27, must be submitted with the missing items identified in this letter.

The following item(s) appear to have been **omitted** from the application:

- Figure(s) 14, 15 & 16A-B described in the specification.

I. Should applicant contend that the above-noted omitted item(s) was in fact deposited in the U.S. Patent and Trademark Office (USPTO) with the nonprovisional application papers, a copy of this Notice and a petition (and \$130.00 petition fee (37 CFR 1.17(h))) with evidence of such deposit **must** be filed within **TWO MONTHS** of the date of this Notice. The petition fee will be refunded if it is determined that the item(s) was received by the USPTO.

II. Should applicant desire to supply the omitted item(s) and accept the date that such omitted item(s) was filed in the USPTO as the filing date of the above-identified application, a copy of this Notice, the omitted item(s) (with a supplemental oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such items), and a petition under 37 CFR 1.182 (with the \$130.00 petition fee (37 CFR 1.17(h))) requesting the later filing date **must** be filed within **TWO MONTHS** of the date of this Notice.

Applicant is advised that generally the filing fee required for an application is the filing fee in effect on the filing date accorded the application and that payment of the requisite basic filing fee on a date later than the filing date of the application requires payment of a surcharge (37 CFR 1.16(e)). To avoid processing delays and payment of

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 02 FC:2051 65.00 DA

a surcharge, applicant should submit any balance due for the requisite filing fee based on the later filing date being requested when submitting the omitted items(s) and the petition (and petition fee) requesting the later filing date.

III. The failure to file a petition (and petition fee) under the above options (I) or (II) within **TWO MONTHS** of the date of this Notice (37 CFR 1.181(f)) will be treated as a constructive acceptance by the applicant of the application as deposited in the USPTO. **THIS TWO MONTH PERIOD IS NOT EXTENDABLE UNDER 37 CFR 1.136(a) or (b).** In the absence of a timely filed petition in reply to this Notice, the application will maintain a filing date as of the date of deposit of the application papers in the USPTO, and original application papers (i.e., the original disclosure of the invention) will include only those application papers present in the USPTO on the date of deposit.

In the event that applicant elects not to take action pursuant to options (I) or (II) above (thereby constructively electing option (III)), amendment of the specification to renumber the pages consecutively and cancel incomplete sentences caused by any omitted page(s), and/or amendment of the specification to cancel all references to any omitted drawing(s), relabel the drawing figures to be numbered consecutively (if necessary), and correct the references in the specification to the drawing figures to correspond with any relabeled drawing figures, is required. A copy of the drawing figures showing the proposed changes in red ink should accompany with any drawing changes. Such amendment and/or correction to the drawing figures, if necessary, should be by way of preliminary amendment submitted prior to the first Office action to avoid delays in the prosecution of the application.

SUMMARY OF FEES DUE:

Total additional fee(s) required for this application is **\$450** for a Small Entity

- **\$385** Statutory basic filing fee.
- **\$65** Late oath or declaration Surcharge.

Replies should be mailed to: Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

*A copy of this notice **MUST** be returned with the reply.*


Customer Service Center
Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE